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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,620	12/14/2000	Johannes Alphonsus Van Hegelsom	U013111-0	3530

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NEW YORK, NY 10023

EXAMINER

DAWSON, GLENN K

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/21/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/719,620

Applicant(s)

VAN HEGELSOM, JOHANNES  
ALPHONSUS

Examiner

Glenn K Dawson

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): 103 of claim 85 by Nestor.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.


The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 57-59, 61, 62, 64, 65, 77 and 78.Claim(s) rejected: 55, 56, 60, 63, 66-76 and 79-85.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
Glenn K Dawson  
Primary Examiner  
Art Unit: 3761

Continuation of 5. does NOT place the application in condition for allowance because: The claims rejected under 101 are done so because the claims positively recite the elements of the device relative to the wearer. This does positively recite the wearer. Simply using the "adapted to" or configured to" language in the claims would alleviate this problem. Instead of claiming that the cap extends over the patient's head, claim that the cap is adapted to extend over the patient's head. Which one of the clamping members extends "over" the tube depends entirely on the point of view. Turning the tube over would change the "top" tube to the "bottom" tube. Therefore either one of the clamping members could be "over" or "under" the tube. For the apparatus claims, the examiner contends that one could hold the plate and one of the clamping members still while merely pivoting the other clamping member to close the members about a tube inserted therethrough. Taking the device as shown in fig. 1 clamped about a tube, the user could hold the plate and member 19 still and unhook the latch 18b on member 17 and pivot it out of the way to release the tube. Doing this method in reverse should demonstrate that it would be possible to hold the plate and one member still while closing the other member to clamp the tube in place. .